

CHAPTER 34.

PUBLIC DEPOSITS.

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34.01 Definitions. As used in this chapter: (1) "Public deposit" shall mean moneys deposited by the state or any county, city, village, town, drainage district, power district, school district, sewer district, or any commission, committee, board or officer of any governmental subdivision of the state, or any court of this state, in any state bank, savings and trust company, mutual savings bank, or national bank in this state, including private funds held in trust by a public officer for persons, corporations or associations of individuals.

(2) "Public depository" shall mean a state bank, savings and trust company, mutual savings bank, or national bank in this state which receives or holds any public deposits.

(3) "Public depositor" shall mean the state or any county, city, village, town, drainage district, power district, school district, sewer district, or any commission, committee, board or officer of any governmental subdivision of the state or any court of this state which deposits any moneys in a public depository.

(4) "Governing board" shall mean the county board or committee designated by the county board to designate public depositories in the case of a county, the city council in the case of a city, the village board in case of a village, the town board in case of a town, the school board in the case of a school district, the judge or board of judges in case of any court in this state, and any other commission, committee, board or officer of any governmental subdivision of the state not hereinbefore mentioned.

(5) "Public moneys" shall include all moneys coming into the hands of the state treasurer or the treasurer of any county, city, village, town, drainage district, power district, school district, sewer district, or of any commission, committee, board or officer of any governmental subdivision of the state, or the clerk of any court in this state, by virtue of his office without regard to the ownership thereof.

(6) "Loss" shall mean any loss of public moneys, which have been deposited in a designated public depository in accordance with this chapter and upon which the required payment has been made into the state deposit fund, resulting from the failure of any public depository to repay to any public depositor the full amount of its deposit because the commissioner of banking or the comptroller of currency has taken possession of such public depository or because such public depository has, with the consent and approval of the commissioner of banking and the state board of deposits, adopted a stabilization and readjustment plan or has sold a part or all of its assets to another bank which has agreed to pay a part or all of the deposit liability on a deferred payment basis or because such depository is prevented from paying out old deposits because of rules and regulations of the commissioner of banking or the comptroller of the currency.

(7) "Treasurer" shall mean any duly elected, appointed or acting official of the state or of any county, city, village, town, drainage district, power district, school district, sewer district, or of any commission, committee, board or officer of any governmental subdivision of the state, or the clerk of any court in this state, whose official duties require that he receive and account for public moneys.

(8) (a) "Inactive deposits" shall mean public deposits which have been deposited subject to the bank's rules and regulations relative to time accounts.

(b) "Active deposits" shall mean public deposits which are subject to withdrawal on demand. [*Spl. S. 1931 c. 1 s. 2; 1933 c. 435 s. 2; 1935 c. 55, 222, 438; 1937 c. 210*]

Note: Moneys of the Milwaukee policemen's annuity and benefit fund, when deposited in a designated depository bank by the city treasurer as custodian of such fund, are a "public deposit," within (1) and are "public moneys," within (5). *Tesch v. Board of Deposits*, 237 W 527, 297 NW 379.

Public officers receiving moneys by virtue of their offices come within provisions of chapter 34 and are bound by and receive protection of said chapter. Moneys held in trust by superintendent of home for dependent children for benefit of wards of home are public moneys and come within

provisions of chapter 34. Those designated by county board are public depositories for clerks of court. 21 Atty. Gen. 127.

Funds distributed to local units of government or committees by industrial commission are public deposits and are covered by chapter 34. 22 Atty. Gen. 180.

Reconstruction Finance Corporation moneys deposited by governor or unemployment relief trustees are public deposits under chapter 34. 22 Atty. Gen. 319.

Deposits of state annuity and investment board are public deposits as defined in (1). 29 Atty. Gen. 421.

34.015 [Renumbered section 34.05 (1) by 1935 c. 55]

34.02 Board of deposits of Wisconsin. The "Board of Deposits of Wisconsin," hereafter referred to as "the board of deposits," shall consist of the commissioners of public lands and the governor. The board of deposits shall be a body corporate and may sue or be sued in said name. The board of deposits shall have a seal with the words, "Board of Deposits of Wisconsin," and such other design as the board may prescribe, engraved thereon, by which it may authenticate its proceedings. The governor shall be the chairman of the board of deposits, the secretary of state shall be the secretary and the state treasurer shall be the treasurer thereof. The members of the board of deposits shall receive no additional compensation for the performance of their duties. The record of the proceedings of the board of deposits shall be kept by the secretary, and a duly certified copy thereof, or any part thereof, shall be admissible in evidence in any action or proceeding in any court of this state. [*Spl. S. 1931 c. 1 s. 3; 1933 c. 5 s. 1; 1935 c. 55*]

Note: Board of deposits may accept non-assessable capital stock of newly organized national bank in lieu of part of its claim against old bank. Board may not accept capital stock of state bank which is subject to statutory assessment in lieu of part of its claim. 23 Atty. Gen. 50.

34.025 [Renumbered section 34.07 (1) by 1935 c. 55]

34.026 Privately owned trust funds; interest charges. Where any part of funds deposited by any public depositor, as defined by subsection (2) of section 34.01, shall consist of privately owned trust funds, the state, county, town, city, or village, by appropriate action of its governing body, or the governing body of any other such public depositor defined by such section, may assume and pay, as an item of general expense, all interest charges collected from such trust fund by any public depository and paid to the state board of deposits under the provisions of this chapter. [*1935 c. 394*]

34.03 Powers of board of deposits.

The board of deposits shall have power:

(a) To make and enforce rules and regulations necessary and proper to the full and complete performance of its functions;

(b) To contract for reinsurance of the state deposit fund to protect it against excessive losses;

(c) To fix the rates of interest to be paid by public depositories on active deposits and special deposits of the state treasurer. Such rates of interest shall be based upon the size and activity of public deposits and shall take into consideration the net return to banks on sound investments. Rates of interest fixed as provided herein shall be uniformly paid by all public depositories on all public deposits unless the payment of interest on such deposits is prohibited under any act of congress or any rule or regulation of any federal agency having supervision over such public depository, and such public deposits shall be subject to no charge other than the amount required to be paid into the state deposit fund and federal taxes. Any public depository which refuses, neglects or by subterfuge avoids payment of interest on public deposits in accordance with the fixed rates shall be excluded from the right to receive and hold public deposits. Inactive deposits other than special deposits of the state treasurer shall bear the same rates of interest, as are paid by such public depository on time accounts.

(d) To fix the rate of payment into the state deposit fund, based on the standard that the state deposit fund should have sufficient reserves to enable it to promptly pay all losses likely to occur, but that the charge to public depositors should be no higher than is necessary for this purpose; provided, that if the board shall borrow money and shall pledge a part or all of the payments hereunder required to be made into the state deposit fund, then the rate of payment in effect at the time such loan is negotiated shall remain in full force and effect until such loan is fully repaid;

(e) To borrow money upon such terms as it deems proper to carry out the purposes for which the state deposit fund was created, without any liability upon the state beyond the fund itself and to pledge assets of the fund as collateral security, including payments required to be paid into the state deposit fund or any part thereof;

(f) To require any public depository, the banking commission or the trustees of segregated trusts created by banks for the benefit of depositors to furnish such information as

the board of deposits may request. Any public depository which shall refuse or neglect to give any information so requested shall be excluded from the right to receive public deposits;

(g) To appoint an executive secretary and employ such additional clerks as shall be necessary to administer and carry out the purposes of the provisions of this chapter. All expenses of administration and reinsurance shall be paid out of the state deposit fund;

(h) To levy and collect penalties provided herein by appropriate actions;

(i) To take such action as the board of deposits in its discretion shall deem best for the protection, collection, compromise or settlement of any claim against or in favor of the state deposit fund;

(j) To designate public depositories for deposits of state funds and to prescribe and allocate the deposits of state moneys and to have all the powers and duties with relation to the state treasurer and state moneys that are herein granted and imposed upon other governing boards, and only such banks as have been named by the board of deposits as working banks shall carry state deposits on which checks are drawn to conduct the daily business of the state, all of which deposits shall be payable on demand. The board of deposits may designate banks as special depositories in which the state treasurer may make special deposits of funds which are not currently needed for the conduct of the daily business of the state, which special deposits shall be deposited subject to such bank's rules and regulations relative to either savings accounts, time certificates of deposit or open time accounts, as the case may be, and shall bear interest at the rate of one and one-half per centum per annum, payable quarterly, until changed by the board of deposits. Public depositories heretofore designated as state depositories shall continue as such until further action by the board of deposits and special deposits heretofore made by the state treasurer shall be transferred by such special depositories from demand accounts to either savings accounts, time certificates of deposit or open time accounts as directed by the state treasurer:

(k) To prescribe rules and regulations fixing the requirements for qualification of banks as public depositories and fixing the maximum allowable total public deposits of banks and the terms and conditions under which public deposits may be received and held;

(l) In addition to the powers expressly conferred, the board of deposits shall have all powers reasonably necessary and proper to the full and complete performance of its functions, including but not limited to ordinary powers granted corporations;

(m) To administer and liquidate assets of the old state depository fund, originally created by chapter 449, laws of 1925, which fund shall be kept separate from the state deposit fund and all net collections from which shall be paid into the general fund at the end of each fiscal year;

(n) To fix the official date on which losses shall be deemed to have been incurred, taking into consideration the orders, rules and regulations of the banking commission and the comptroller of the currency as they affect the failure of such public depository to repay public deposits in full. Notice of such official date of loss shall be served on the treasurer of each public depositor by registered mail, and the limitation provided in subsection (3) section 34.08 shall begin to run on the receipt of such notice by such treasurer. [1935 c. 55, 222, 438, 477; 1937 c. 210, 426]

Note: The state deposit guarantee fund law under consideration is not unconstitutional as an unwarranted delegation of legislative power, a depository bank having only the nondiscretionary ministerial duty to collect from the depositor and pay over

to the board of deposits, which administers the law, and sufficient standards for determining how much is collectible for the deposit fund being set out. *Tesch v. Board of Deposits*, 237 W 527, 297 NW 379.

34.04 Orders of board of deposits. (1) The board of deposits, prior to the issuance of any order fixing the rates of interest, rate of payment into the state deposit fund or any other order of general application, shall hold a public hearing and not less than twenty days in advance thereof shall publish notice of the nature, time and place of such public hearing at least once in the official newspaper.

(2) The board of deposits shall publish all general orders at least once in the official newspaper and such orders shall be effective thirty days after publication unless a later effective date is specified therein.

(3) Any public depositor, public depository or other interested person being dissatisfied with any order of the board of deposits may commence an action in the circuit court of Dane county against the board of deposits of Wisconsin as defendant to vacate and set aside such order, on the ground that such order is unlawful or unreasonable, in which action the complaint shall be served with the summons. No injunction or restraining order restraining or withholding the effective date of such order shall be issued until after trial of such action on its merits. All orders, rules and regulations in effect on passage of this act shall remain in effect until changed in accordance herewith. [1935 c. 55]

34.05 Designation of public depositories. (1) The governing board of each public depositor shall, by resolution, certified copy of which shall be filed with the board of de-

posits, designate one or more banks, banking institutions, or trust companies, organized and doing business under the Wisconsin or United States laws, located in Wisconsin, which have been approved by the board of deposits as qualified to become public depositories, in which the treasurer of such governing board shall deposit all public moneys coming into his hands. A designation of a public depository by the governing board shall be a designation of such public depository for all treasurers of such governing board and for all public depositories for which each such treasurer shall act.

(2) Whenever any governing board shall fail or refuse to designate a public depository the treasurer thereof, after notice in writing to each member of the governing board and subject to further action of the governing board, may designate public depositories to act as such for not exceeding ninety days in the same manner as if designated by such governing board, and shall immediately certify such designations to the board of deposits.

(3) It shall be the duty of every treasurer to deposit immediately upon receipt thereof the funds received by him by virtue of his office in the name of the municipality in the public depository or public depositories designated by the governing board.

(4) If any governing board shall refuse or neglect to comply with the provisions of subsection (1), or if on such refusal or neglect on the part of the governing board, the treasurer shall refuse or neglect to comply with the provisions of subsection (2), or if any governing board shall authorize its treasurer to retain funds of the municipality in his hands other than such amounts as are now authorized by statute or to deposit such funds in a bank located without this state except as approved by the board of deposits or shall by any other act of omission or commission attempt to evade the provisions of this chapter, then such municipality shall pay into the state deposit fund an amount equal to the amount required to be paid into the state deposit fund if such funds had been deposited according to the provisions of this chapter, plus a penalty equal to twenty-five per centum of such required payment. [*Spl. S. 1931 c. 1 s. 2; Spl. S. 1931 c. 11; 1933 c. 435 s. 2, 3; 1935 c. 55, 394*]

Note: Subsection (4) does not apply to funds sent to out-of-state banks for purpose of meeting bond issues at maturity, even though funds must be sent prior to maturity date. 24 Atty. Gen. 373.

Money raised for specific purpose of paying bonds by county must be placed in public depository. 24 Atty. Gen. 644.

34.06 Liability of treasurers. Notwithstanding any other provision of law, the state treasurer and the treasurer of any county, city, village, town, drainage district, power district, school district, sewer district, or any commission, committee, board or officer of any governmental subdivision of the state, upon depositing public moneys in any public depository, in compliance with the requirements of section 34.05 without regard to the giving, renewal or approval of a bond or other security by such depository, is thereby relieved of liability for any loss of public moneys which results from the failure of any such public depository to repay to such public depositor the full amount of its deposits thus causing a loss as defined in subsection (6) of section 34.01. [*Spl. S. 1931 c. 1 s. 2; Spl. S. 1931 c. 11; 1933 c. 435 s. 2; 1935 c. 55*]

Note: Cashier of institution, having given official bond, is insurer of public funds lawfully in his possession and liability for losses occurring even without his fault is covered by such bond. 26 Atty. Gen. 328.

34.065 School savings deposits as public deposits. (1) Where school savings deposits have been collected by the school treasurer, school superintendent, school-teacher or an agent thereof, and have been deposited in a public depository designated by such board, and the board of deposits has been notified of such designation and of such deposits, and such public depository prior to July 26, 1933, failed to repay such deposits for any of the reasons provided in subsection (6) of section 34.01 thereby causing a loss to the depositor as defined by said subsection, such deposits shall have the same character and status and be entitled to the same benefits as other public deposits, notwithstanding any failure to comply with the provisions of subsection (3) of section 34.08.

(2) Any school district having school savings deposits which shall come within the provisions of this section and which shall have continued to receive and hold school savings deposits shall be required to comply with all the provisions of this chapter and shall be required to pay into the state deposit fund the amount due on such deposits from the date of deposit thereof. [*1935 c. 34*]

34.07 Application of chapter 34 limited. (1) Sections 34.01 to 34.12 shall not apply to deposits of public funds which are secured by bonds or other security furnished under statutes heretofore in effect so long as such bonds or other security shall remain in force; provided bonds now in force which have no definite expiration date shall stand cancelled as of July 1, 1933, and that no such bonds or other security shall be renewed.

(2) No bond or other security shall be required of or given by any public depository for any public deposits, and compliance with the provisions of chapter 34 shall be in lieu of any requirement of a bond or other security from any public depository. [*Spl. S. 1931*

c. 1 s. 2; 1933 c. 5; 1933 c. 435 s. 2; 1935 c. 55]

34.075 [*Renumbered section 34.10 by 1935 c. 55*]

34.08 State deposit guarantee fund. (1) (a) Payments made as required by the provisions of this chapter shall be set apart from other funds of the state and shall constitute the state deposit fund. Such fund shall be used solely for the payment to public depositors of losses as defined by subsection (6) of section 34.01 and the repayment of any sums borrowed by the board of deposits for the purpose of paying losses required to be paid out of such fund. Such fund shall be deposited or invested by the board of deposits as are other funds of the state. On satisfactory proof of loss, the board of deposits shall direct the secretary of state to draw his warrant payable from the state deposit fund in payment of such loss as provided in this chapter, and the state treasurer shall promptly pay such warrant out of moneys in his hands to the credit of the state deposit fund.

(2) Every bank receiving or having any public funds on deposit, shall on the last day of March, June, September and December in each year pay into the state deposit fund at the per centum rate per year on the average daily balance of such deposits so deposited with it for the preceding three months' period as fixed by the board of deposits, such sum to be collected by the depository from the depositors, and any public depository which shall refuse or neglect to make such report and remittance within fifteen days after its due date shall pay into the state deposit fund the sum of five dollars for each and every day of tardiness in excess of fifteen days. In the event the amount required to be paid into the state deposit fund on any given public deposit shall be greater than the interest earned on such public deposits, then the public depository is hereby authorized to deduct the difference from the principal of such public deposit. In the event the amount required to be paid into the state deposit fund on private funds held in trust by a public officer for private persons, corporations or associations of individuals shall be greater than the net interest received then the public depositor is hereby authorized to deduct the difference from the principal of such private fund. Amounts due the state deposit fund for the quarter in which a loss occurs shall be deducted before payment of such claim.

(3) (a) Losses as defined by subsection (6) of section 34.01 shall become fixed as of the date the loss occurs and shall be paid pro rata based on the original loss out of the state deposit fund without interest, as rapidly as sufficient funds are available in the state deposit fund to permit a payment of not less than five per cent except in case of final payment. Any funds received by the board of deposits as a loan shall be paid pro rata to all public depositors whose interest in claims against public depositories are pledged to secure such loans. Claims having a balance of five hundred dollars or less shall be paid in full at the time of the making of the next succeeding payment of claims from the public deposit fund. On the occurrence of a loss as defined in subsection (6) of section 34.01 each public depositor suffering such a loss shall within sixty days thereafter assign all its interest in such deposit to the state deposit fund and on failure so to do shall forfeit all right of claim against the state deposit fund.

(4) Notwithstanding the provisions of subsection (3) of this section public depositors suffering losses prior to July 26, 1933, who failed to file claim within the time fixed by said subsection may file claim any time before September 1, 1939, and such claims may be allowed in the discretion of the board of deposits as valid claims against the state deposit fund.

(5) Notwithstanding provisions of subsection (1) of section 34.07 the board of deposits in its discretion may allow as valid claims against the state deposit fund claims of public depositors whose deposits at or prior to the sufferance of a loss were wholly or partially secured by bonds or other security even though a part of the original loss has been recovered on such bonds or other security. [*Spl. S. 1931 c. 1 s. 2; 1933 c. 5; 1933 c. 435 s. 2; 1935 c. 55, 184; 43.08 (2); 1937 c. 122; 1939 c. 440*]

Note: Reconstruction Finance Corporation moneys deposited by governor or unemployment relief trustees in public depository which has failed to repay on demand constitute valid claim against state public deposit fund. Sums due state public deposit fund under (2) on such funds and similar funds should be paid by public depositors. 22 Atty. Gen. 488.

Tax money collected by tax commission and deposited in various banks is classed as state money until distributed to counties, towns, cities and villages, for purposes of payment into deposit fund, and two per cent insurance on this money payable to state de-

posit fund must be paid by state treasurer out of general fund. 23 Atty. Gen. 46.

Where public depositor assigns its claim against defunct bank to board of deposits and closed bank repays one hundred per cent plus interest, such interest goes to board and not to depositor. 25 Atty. Gen. 313.

Municipal utility funds are separate and distinct from general funds of municipality and are held by municipality in separate capacity and right within meaning of FDIC act and are each entitled to be treated as insured funds to full extent of \$5000. 29 Atty. Gen. 407.

34.09 Banks as public depositories. Every state bank, savings and trust company and mutual savings bank and every national bank located in this state which shall file with the board of deposits an agreement that it will pay over to the state deposit fund the amounts required to be paid on average daily balances of public deposits under subsection

(2) of section 34.08 and will comply in all respects as to public deposits with the provisions of chapter 34 and which meets the qualifications required by the rules and regulations of the state board of deposits, may be designated as a public depository and may receive and hold public deposits, subject to the provisions of this chapter, in an amount not in excess of the amount specified by the board of deposits. The board of deposits, upon request, shall advise any interested persons what banks have qualified to become public depositories and any such bank may thereafter be designated by any governing board as a public depository. The board of deposits shall have the same powers and duties with regard to making and continuing public deposits in national banks as the powers and duties exercised and performed by it with regard to public deposits in state banks. [*Spl. S. 1931 c. 1 s. 2; 1933 c. 435 s. 2; 1935 c. 55*]

Note: Where the state under sec. 14.44, Stats. 1931, had intrusted bonds and coupons to a state depository "to collect and credit," and the depository, upon being credited by a subsequent collecting bank, had merely issued a certificate of deposit to itself without the knowledge or consent of the state, and shortly thereafter failed, the sureties on the depository bonds were not liable for such proceeds, since the depository thereby had become only a "debtor" and not a "depository" on account of such funds, and such funds had not become a "deposit" within the meaning of the depository bonds. *State v. United States F. & G. Co., 215 W 91, 254 NW 130.*

34.10 Reorganization and stabilization of banks. Whenever the commissioner of banking or the comptroller of the currency with a view of restoring the solvency of any bank of which he has taken charge, pursuant to law, or with a view to stabilizing and readjusting the banking structure of any national or state banking institution located in this state, shall approve a reorganization plan or a stabilization and readjustment agreement entered into between such bank and depositors and unsecured creditors, or when a bank, with the approval of the commissioner of banking or comptroller of currency proposes to sell its assets to another bank which agrees to assume a part or all of the deposit liability of such selling bank and to pay the same on a deferred payment basis, the governing board of such public depository may, on the approval of the board of deposits, join in the execution of any reorganization plan, or any stabilization and readjustment agreement, or any depositor's agreement relative to a proposed sale of assets if, in its judgment and that of the board of deposits, such reorganization plan or stabilization and readjustment agreement or proposed sale of assets is in the best interest of all persons concerned. The joining in any such reorganization plan, or any stabilization and readjustment agreement, or any proposed sale of assets which meets the approval of the board of deposits shall not operate as a waiver of any rights arising under this chapter or under any bond or other security which was given for the repayment of any such public funds on deposit in such bank. [*1933 c. 435 s. 3; 1935 c. 55*]

34.11 Penalties. Any person who shall wilfully violate any provisions of sections 34.01 to 34.10, or any orders, rules or regulations promulgated by the board under the provisions of said sections, shall be guilty of a misdemeanor and for each and every such offense shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. [*1935 c. 55*]

34.12 Separability of provisions. If any provision of this chapter or the application thereof to any person or circumstances is held unconstitutional, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby. [*Spl. S. 1931 c. 1 s. 2; 1935 c. 55*]